

Sep 20, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

TONY RAFAEL BAEZA-CRUZ,  
DAVID FILIBERTO DOMINGUEZ-  
KU, DIVEIN FERNANDO TOBON-  
MUNOZ, JOSE ARMANDO SULUB-  
CHAN, and JUAN CARLOS MIS-  
BALAM,

Defendants.

No. 2:19-CR-0075-JTR

ORDER GRANTING MOTION  
TO DISMISS COUNT 2 OF THE  
INDICTMENT

**THIS MATTER** comes before the Court on Defendants' July 26, 2019 joint motion to dismiss Count 2 of the Indictment. ECF No. 100. The United States is represented by Assistant U.S. Attorney Matthew F. Duggan. Defendants Tony Rafael Baeza-Cruz, David Filiberto Dominguez-Ku, Divein Fernando Tobon-Munoz, Jose Armando Sulub-Chan, and Juan Carlos Mis-Balam have waived their presence in this case and are excused from any attendance pursuant to FED. R. CRIM. P. 43. Each defendant is represented by counsel.

Count 2 of the Indictment in this case alleges a violation of 8 U.S.C. § 3125(a)(2), Eluding Examination and Inspection by Immigration Officers. ECF No. 15. On July 24, 2019 the Ninth Circuit decided *United States v. Corrales-Vazquez*, No. 18-50206, 2019 WL 3311349 (9th Cir. July 24, 2019). The Circuit

1 Court of Appeals there held that the government does not prove that a person has  
2 “eluded examination and inspection” as proscribed by 8 U.S.C. § 3125(a)(2), if  
3 that person has not entered the United States at a designated border crossing point.

4 Based on this recent Ninth Circuit decision, the Court invited the parties to  
5 submit additional briefing regarding the potential impact of the case by July 26,  
6 2019. ECF No. 99. Defendants’ filed the instant joint motion to dismiss; the  
7 government did not file supplemental briefing and did not file a response to  
8 Defendants’ motion to dismiss.

9 *Corrales-Vazquez* holds that for a Section 1325(a)(2) charge to stand, entry  
10 must have been made at a port of entry that was open for inspection. On  
11 September 19, 2019, the parties submitted a supplement which indicates they agree  
12 “[n]one of the acts alleged in the Indictment occurred at a designated port of entry  
13 that was open for inspection and examination.” ECF No. 113 at 2. In light of  
14 *Corrales-Vazquez*, the conduct alleged in this case is not a violation of Section  
15 1325(a)(2). Accordingly, Defendants’ motion to dismiss, **ECF No. 100**, is  
16 **GRANTED** and **Count 2 is DISMISSED**.

17 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
18 order and furnish copies to counsel.

19 DATED September 20, 2019.



A handwritten signature in black ink, appearing to be "M", is written over a horizontal line.

JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE